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Miller



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Neighborhood Development Corporation
File: B-246166
Date: February 7, 1992

Eugene B. Cortese, Esq., Starfield, Payne & Korn, for the protester.
Janet M. Hedrick, Esq., Vedder, Price, Kaufman & Kammholz, for A&M Janitorial Services, Inc., an interested party.
Howard B. Rein, Esq., Department of the Navy, for the agency.
Behn Miller, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where bidder's Certificate of Procurement Integrity indicates that bidder possesses no information regarding procurement violations and is otherwise complete, the bidder's failure to insert the word "none" in the certificate, which confirms a lack of violations, is not a material omission which would make the bid nonresponsive.
2. Protester may not assert a claim of mistake in the awardee's bid since it is the responsibility of the contracting parties--the government and the awardee--to assert rights and bring forth the necessary evidence to resolve mistake questions.

DECISION

Neighborhood Development Corporation (NDC) protests award of a contract to A&M Janitorial Services, Inc., under invitation for bids (IFB) No. N62472-91-B-5612, issued by the Department of the Navy for janitorial services at the Naval Aviation Supply Office, Philadelphia, Pennsylvania. NDC argues that because A&M failed to enter the word "none" in paragraph 3 of the solicitation's required procurement integrity certification form, the awardee's bid should have been rejected as nonresponsive. NDC also alleges that A&M's bid contains pricing errors.

We dismiss the protest.

The IFB was issued on June 12; bid opening was held on July 19. The IFB contained the Certificate of Procurement Integrity clause, as set forth in Federal Acquisition Regulation (FAR) § 52.203-8 (FAC 90-5), and advised offerors that the "[f]ailure of a bidder to submit the signed certificate with its bid shall render the bid nonresponsive."¹ The certificate implements 41 U.S.C. § 423(e)(1) (Supp. I 1989), a statute that bars agencies from awarding contracts unless a bidder or offeror certifies in writing that neither it nor its employees have any information concerning violations or possible violations of the Office of Federal Procurement Policy (OFPP) Act provisions set forth elsewhere in 41 U.S.C. § 423. The FAR § 52.203-8 certificate form set forth in the IFB provides spaces for the name of the employee responsible for preparing the offer in paragraph 1; the bidder's name in paragraph 2; any violations or possible violations, as well as the instruction to "Enter None if None Exist," in paragraph 3; and the signature and typed name of the responsible employee at the end of the certificate. A&M signed and otherwise completed the certificate, but did not insert the word "none," or make any other entry in paragraph 3.

In its protest, NDC asserts that A&M's failure to insert the word "none" in paragraph 3 of the Certificate of Procurement Integrity is a material omission which renders A&M's bid nonresponsive.

The facts of this case are identical to those in Boardsen Assocs., Inc., B-245876, Jan. 27, 1992, 92-1 CFD ¶ _____. As explained in Boardsen, a bidder's failure to enter the word "none" in the certificate is not a material omission since, by the express terms of paragraph 1 of the FAR § 52.203-8 certificate form, where the bidder has otherwise properly completed and signed the certificate, the blank space in paragraph 3 constitutes the bidder's redundant affirmation that it has "no information" describing violations or possible violations of the OFPP Act.² With the exception of paragraph 3, A&M properly completed and signed the certificate; since the protester has not identified any scenario which would render A&M's certificate, as submitted, unenforceable, we find that NDC has failed to state a valid

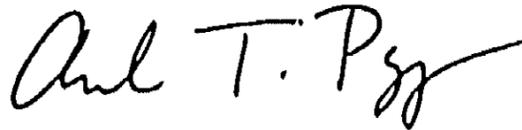
¹The Certificate of Procurement Integrity is required in all solicitations where contract award is expected to exceed \$100,000. See FAR § 3.104-10(a) (FAC 90-2).

²Paragraph 1 of the certificate provides that the employee or officer signing the certificate has "no information concerning a violation or possible violation of . . . the [OFPP Act]."

basis of protest. See Bid Protest Regulations, 4 C.F.R. § 21.3(m) (1991).

NDC also contends that A&M's bid contains mathematical pricing errors. Specifically, the protester alleges that A&M understated the cost of liability insurance and state workmen's compensation rates as evidenced by a worksheet A&M submitted with its bid. The record shows that A&M knowingly used State of Illinois rates to "estimate" rates for the State of Pennsylvania where contract performance would occur. There is nothing in the record to show that the prices A&M bid were not the prices it intended to bid. See C.W.R. Constr., Inc., B-224301, Dec. 2, 1986, 86-2 CPD ¶ 629. In any event, it is the responsibility of the contracting parties--the government and the awardee--to assert rights and bring forth the necessary evidence to resolve mistake questions. Collins Siding Co., B-237130, Oct. 16, 1989, 89-2 CPD ¶ 358. A&M never claimed to have made a mistake in calculating its bid price, and the agency has accepted the prices as valid.³ Accordingly, we also dismiss this protest ground. Id.; see also G&A General Contractors, B-244094, Aug. 27, 1991, 91-2 CPD ¶ 704.

The protest is dismissed.



Andrew T. Pogany
Acting Assistant General Counsel

³In response to two separate requests by the Navy--which were issued after NDC filed two agency-level protests alleging mistakes in A&M's bid--A&M verified its bid price by letters dated August 9 and September 4.